FILE COPY

Office - Supreme Court, U.S.
FILED
DEC 23 1947
CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 491

ROBERT BRADLEY,

Petitioner,

vs.

STATE OF CONNECTICUT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT AND BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

ELLIOTT R. KATZ,
CHARLES HENCHEL,
Counsel for Petitioner.

INDEX

Subject Index

	Page
Petition for writ of certiorari	1
Summary statement of matter involved	1
Statement as to jurisdiction	3
Questions presented	4
Reasons relied on for allowance of writ	4
Prayer for writ	5
Brief in support of petition for writ of certiorari	7
Opinion of Court below	7
Jurisdiction	7
Statement of case	8
Specification of errors	8
Summary of argument	9
A. Failure to grant separate trials on each count	10
B. Depriving Petitioner of his right to a trial by an impartial jury	12
Conclusion	20

Table of Cases Cited

Allen v. *United States*, 164 U. S. 501, 17 Sup. Ct. 154, 157	19
Berger v. *United States*, 62 F. (2d) 438	17
Clem v. *State*, 13 Am. Rep. 369	13
Golatt v. *State*, 60 S. E. 17	13
McElroy v. *United States*, 164 U. S. 76, 80, 17 Sup. Ct. 31	11
Nick v. *United States*, 122 F. (2d) 660, 674	13
People v. *Faber*, 199 N. Y. 256	16
Potard v. *State*, 299 N. W. 362	14, 16
State v. *Agnew*, 147 Atl. 485	10
State v. *Campbell*, 160 Mo. App. 559, 149 S. W. 1173	16
State v. *Clark*, 149 Pac. 185	16
State v. *Fasano*, 119 Conn. 455	11
State v. *Kemp*, 126 Conn. 60	10

Page

State v. *Rocco*, 109 Conn. 571 10
State v. *Fisher*, 59 Pac. 919 16
State v. *Smith*, 49 Conn. 378 ..... 2, 12
Stewart v. *United States*, 300 Fed. 789 19
United States v. *Burton*, 196 U. S. 307, 25 Sup. Ct. 250 19

OTHER AUTHORITIES CITED

Constitution of the United States:
Sixth Amendment 3
Fourteenth Amendment 3, 10
28 U. S. C. A. Sec. 344 (b) 3, 7

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 491

ROBERT BRADLEY,

Petitioner,

vs.

STATE OF CONNECTICUT,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

MAY IT PLEASE THE COURT:

The petition of Robert Bradley respectfully shows to this Honorable Court:

A

Summary Statement of the Matter Involved

On October 31, 1946, the petitioner was indicted by a Grand Jury in the Superior Court for New Haven County, at New Haven, for murder in the first degree, 3 counts (R. 2).

The petitioner pleaded not guilty to all counts and elected a trial by jury, on November 6, 1946. On January 3, 1947

the petitioner filed a motion for separate trials on each count and the Court, having heard said motions denied the same. Trial of the action then commenced.

On January 29, 1947 the case was committed to the Jury, at about 10:30 A. M.

At 10:17 P. M. on January 29, 1947 the Court, of its own volition sent for the jury and read to it a portion of the opinion of *State* v. *Smith,* 49 Conn. 378 (F.* 210, R. 42).

At 11:40 P. M. the jury was excused from its deliberations until 10:30 A. M. January 30, 1947, when it again commenced consideration of the case. The jury sent word to the Court that it had several questions and the Court, in giving the jury supplemental instructions, again referred to *State* v. *Smith* (F. 218, R. 51).

At 3:08 P. M. on January 30, 1947, the jury returned to the courtroom and announced a verdict of murder in the second degree on the first count and its inability to agree on the second and third counts. The Court accepted the verdict on the first count and ordered it recorded, then instructed the jury to continue its deliberations on the other counts and again referred to the statements contained in *State* v. *Smith* (F. 220, R. 52).

At 4:23½ P. M. January 30, 1947, the jury returned with a verdict of guilty in the first degree on the second and third counts.

The verdicts on all three counts were appealed to the Supreme Court of Errors of the State of Connecticut and the judgment was affirmed (R. 754).

The petitioner filed a motion in the Supreme Court of Errors of the State of Connecticut, to reargue the cause, and the motion was denied by said Court and judgment denying said motion was filed on October 8, 1947 (R. 756).

---

* F = finding.

B

Statement as to Jurisdiction

The petitioner contends that the denial of his motion for separate trials on each count of murder in the first degree, as set forth in the indictment, deprived him of his life and liberty without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States.

The petitioner further contends that the supplemental instruction of the trial court to the jury, were coercive and in effect was a removal of the causes from consideration by the jury, in violation of the petitioner's right to a trial by jury in accordance with Amendment 6 of the United States Constitution. Accordingly the case is within the jurisdiction of this Court under U. S. C. A. Title 28, Section 344b.

The petitioner raised the Federal question as to his being deprived of the right of trial by due process in accordance with the Constitution in his motion for separate trials on each count in his motion (R. 55, F. 224) before the commencement of the trial. This issue was likewise raised in the appeal to the Supreme Court of Errors of the State of Connecticut.

The petitioner seasonably took exception to the supplemental instructions of the trial court and again before the Supreme Court of Errors of the State of Connecticut (Assignments of Error B 3, 4, 5, R. 73, 74) argued that such instructions of the trial court in effect removed the cause from the jury's considerations and deprived him of his right to a jury trial in violation of Amendment 6 of the United States Constitution, and likewise Amendment 14.

The above questions were raised in the trial court by objections of counsel and in the brief of the petitioner and in oral argument before the Supreme Court of Errors of the

State of Connecticut. A certified copy of the brief has been filed with the Clerk of this Court.

The petitioner's appeal was denied by the Supreme Court of Errors of the State of Connecticut which is the highest court of the State of Connecticut.

C

Questions Presented

The questions presented here are:

1. Does the presentment of the petitioner on three counts of murder, each allegedly committed separately, at different times and at different places, and each separate and distinct from the other, resulting in one trial on three counts, over the objection of the petitioner, result in a violation of the 14th amendment to the United States Constitution?

2. Were the supplemental instructions of the trial court (R. 42, 51, 52) so coercive as to remove the cause from the consideration of the jury and deprive the petitioner of a trial by an impartial jury in violation of the 6th Amendment to the United States Constitution?

D

Reasons Relied On for the Allowance of the Writ

It is submitted that in denying the petitioner separate trials on each of the three counts, the Supreme Court of Errors of the State of Connecticut has decided a Federal question of substance not theretofore determined by this Court or has decided it in a way probably not in accord with the applicable decisions of this Court.

That the matter is substantial is apparent because the life of the petitioner is at stake.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of Errors of the State of Connecticut, commanding that court to certify and to send to this Court for its review and determination on a day certain, to be therein named, a full and complete transcript of the record and all proceedings in the case called and entitled on its Docket No. 2884, *State of Connecticut* v. *Robert Bradley alias Robert Brady* and that the judgment of the Supreme Court of Errors of the State of Connecticut may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

ROBERT BRADLEY,
By ELLIOTT R. KATZ,
CHARLES HENCHEL,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 491

ROBERT BRADLEY,

Petitioner,

vs.

STATE OF CONNECTICUT,

Respondent

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion of the Court Below

The opinion of the Supreme Court of Errors of the State of Connecticut, which disposed of this case, has not yet been officially reported. It is printed in the record (R. 744).

II

Jurisdiction

(1) The jurisdiction of this Court is invoked under Title 28, U.S.C.A. Section 344 (b). The specific claims as to the jurisdiction of this Court are set out in the foregoing petition under the heading "B" and are not repeated here.

(2) The judgment of the Supreme Court of Errors of the State of Connecticut sought to be reviewed was rendered on

July 30, 1947 (R. 754). On August 4, 1947 a motion to reargue the action was filed with the Supreme Court of Errors (R. 755). Denial of the motion to reargue was entered on October 7, 1947 (R. 756).

(3) This judgment affirms the judgment of the Superior Court for New Haven County at New Haven (R. 754) finding the petitioner guilty.

III

Statement of the Case

The essential facts of the case are given under the heading of "A" in the foregoing petition and in the interest of brevity are not repeated here. Any necessary elaboration of the facts on the points involved will be made in the course of the argument which follows:

IV

Specification of Errors

It is respectfully submitted that the Supreme Court of Errors erred:

1. In finding and holding that trial of the petitioner on three separate counts charging murder on three separate and distinct times was not so prejudicial in itself as to make a trial improper.

2. In finding and holding that the trial of the petitioner on all three counts was within the discretion of the trial court.

3. In finding and holding that in permitting the trial of the petitioner on all three counts, the trial court had failed to abuse its discretion.

4. In failing to find that trial of the petitioner on all three counts constituted a violation of his constitutional rights.

5. In failing to find that the supplemental instructions of the trial court constituted reversible error because they coerced the jury or any member of it or unduly urged upon them the desirability of an agreement.

6. In failing to find that the supplemental instructions deprived the petitioner of his constitutional rights to a trial by a fair and impartial jury.

V

Summary of Argument

We develop the argument under the following:

A

Trial of the petitioner on three separate counts of murder in the first degree, simultaneously, where each count charged the commission of acts, separate and distinct from each other and at separate times and places, was so prejudicial as to deprive the petitioner of his life and liberty without due process of law in violation of the 14th amendment to the Constitution of the United States.

B

The supplemental instructions of the trial court to the jury were coercive and in effect withdrew from the consideration of the jury a full determination of the guilt of the petitioner, deprived him of the right to a disagreement in the event the jurors were unable to agree upon a verdict and deprived him of his constitutional right to a trial by a fair and impartial jury.

VI

A

Failure to Grant Separate Trials on Each Count

The accused was charged with having committed three separate and unrelated murders on widely separated dates. A written motion for separate trials on each count was filed with the court, it being the claim of the accused that trial simultaneously on each count was prejudicial in that it deprived him of his life and liberty without due process of law, in violation of the 14th amendment to the Constitution of the United States.

The submissison of the evidence on all three counts, to the jury, was bound to have a serious effect on the rights of the accused. It was bound to confuse the jury on the elements of each crime. It was error to require the defendant to stand trial at one time on three unrelated crimes.

State v. *Agnew*, 147 Atl. 485;
7 N. J. Misc. 915.

Where the defendant is required to stand trial on separate counts so as to prejudice him in his defense on the merits, or where it appears that substantial justice will be denied by virtue of such joinder, particularly when objection to such procedure is made before trial, it constitutes reversible error.

State v. *Kemp*, 126 Conn. 60;
State v. *Rocco*, 109 Conn. 571.

> The accusation in the third count is separate and distinct in its elements, and as to the time when it was committed, from those made in the first two counts, * * *. The charges were, however, so closely related that it is probable that, in considering them, the jury did not disassociate one from the other, * * *. We would be reluctant to direct a new trial of this action

upon purely technical grounds. But the charges made against the accused were most serious and the penalties imposed severe. A study of the record satisfies us that under the rulings and charge of the court the claims of the accused did not have that full consideration which he was entitled to have them receive and that justice dictates a retrial of the case.

State v. *Fasano,* 119 Conn. 455.

It would seem to be plain beyond a reasonable doubt that the procedure in a capital case of trial on a single issue of homicide should be retained and reserved. The law has thrown many safeguards around an accused, the presumption of innocence, the proof of guilt beyond a reasonable doubt and many others. It also should require that no man be put to trial for his life on more than one count.

Trial of an accused before a jury, for more than one homicide where his life hangs in the balance, jeopardizes his life when he in effect is held out as a habitual criminal and causes the jury to be confounded and distracted when a series of murders are tried simultaneously. The time-honored right of a prisoner to a separate trial on each indictment involving his life has long been recognized in English law and should not be abandoned.

In case of felony, the multiplication of distinct charges has been considered so objectionable as tending to confound the accused in his defense, or to prejudice him as to his challenges, in the matter of being held out to be habitually criminal, in the distraction of the attention of the jury, or otherwise, that it is the settled rule in England and in many of our States to confine the indictment to one distinct offense or restrict the evidence to one transaction. (Cases cited.) Necessarily where the accused is deprived of a substantial right by the action of the court, such action, having been properly objected to is reviseable as error.

McElroy v. *United States,* 164 U. S. 76, 80, 17 Sup. Ct. 31.

VII

B

Depriving Petitioner of His Right to a Trial by an Impartial Jury

The jury retired to deliberate, at about 10:30 A. M. on the morning of January 29, 1947. It continued its deliberations until excused at 11:40 P. M. that evening. It again commenced its deliberations at 10:30 A. M. on the morning of January 30, 1947 and returned its verdicts on the second and third counts at 4:22 P. M. that afternoon. In all it deliberated about 19 hours, except for time taken out for dinner on January 29, and lunch on January 30.

At 10:17 P. M. on the night of January 29, the court, of its own volition, sent for the jury and read to it a portion of the opinion of *State* v. *Smith,* 49 Conn. 378 (F. 210 R. 42), over the objections of counsel for the defendant (F. 209 R. 42). This case sets forth as to the duty and responsibility of a jury and of the individual jurors. The following morning after the jury had returned with several questions they desired answered, the court again referred to *State* v. *Smith,* charging the jury what the court stated was the principle of *State* v. *Smith* (F. 218 R. 51). At 3:08 P. M. on January 30, the jury returned with a verdict on the first count and reported itself unable to agree on the second and third counts. The court accepted the verdict on the first count, ordered it recorded and then directed the jury to resume its deliberations, again referring to the principles of *State* v. *Smith* as the law of our state (F. 220 R. 52). This reading from *State* v. *Smith, supra,* constituted a direct invasion of the province of the jury. While the use of this dicta has been approved by the Supreme Court of Errors of the State of Connecticut it is the contention of the appellant that its use should be limited.

It should never be permitted in a capital case and in any case where the circumstances are such that its use might be considered coercive.

> A court should not unduly urge a jury to find a verdict and employ such expressions as to injuriously affect the defense of the accused. This is especially true in a capital case, where the doctrine of reasonable doubt is involved. On the trial of a homicide case it is the duty of each juror to decide for himself, and he ought not, by the charge of the court, to be required to yield his individual judgment upon the evidence, in order to render a verdict. Whenever the jury are authorized to reach a given conclusion at all, it is a clear invasion of their right, in that connection, to so charge or infer.
>
> *Golatt* v. *State,* 60 S. E. 17;
> *Clem* v. *State,* 13 Am. Rep. 369.

> It seems to us any vice in this kind of statement (language similar to State *v.* Smith, supra) depends upon the situation at the time it is given and upon the language used by the court. The objection is, of course, that such character of instruction may have coercive effect upon the jurors.
>
> *Nick* v. *United States,* 122 Fed. (2d) 660, 674.

Any attempt by the court to impose its thoughts upon the jury, or to indicate what course it, the court, thinks the jury should take, brings with it the weight of the position of the court, in many cases a weight which a jury or juror is unable to withstand.

Under the 6th amendment to the United States Constitution the right to a trial by jury is guaranteed to every person. That right entitled the defendant to a determination of his guilt or innocence by the unanimous verdict of the 12 members of the jury. Any action which interferes with the unanimity of decision by the jurors, or which influences or persuades a juror to abandon a conviction he

has reached, after full and complete consideration and discussion of the evidence, is unwarranted and erroneous.

The action of the court in reading *State* v. *Smith* and then referring to it on two further occasions was not only prejudicial to the accused in that it amounted to coercion, it had the further effect of removing from the province of the jury, the right to disagree. The accused was entitled to a unanimous decision by the jury and was also entitled to a disagreement if no such unanimous decision could be reached. The action of the court in effect, was to instruct the jury that it had to either convict the accused or acquit him. This result might be discounted if *State* v. *Smith* were read to the jury but once, but in this case it was referred to on three occasions, the third coming *after the jury had reported itself unable to agree on the second and third counts.*

In *Potard* v. *State,* 299 N. W. 362, the language used by the court was far less coercive than that used in *State* v. *Smith,* and was the basis of a supplemental charge after the jury had been deliberating much less time than in the instant case. It should also be noted that it was not reiterated. The language follows:

> This case has been submitted to you on instructions which I think are clear and points out the issue for you to determine. You have been given two forms of verdict, one of guilt and one of not guilty. It is your duty to return a verdict. The court does not intimate to you in the slightest degree what your verdict should be. You should return one of these verdicts, which one is for you to say.
>
> Although a verdict to which a juror agrees must of course be his own verdict, the result of his own convictions, yet in order to bring 12 minds to an unanimous result, you must examine the evidence guided by the instructions carefully, with candor and a proper regard and deference of the opinions of each other. You

> should consider that you are selected in the same manner and from the same source from which any further jury must be and there is no reason to suppose the case will ever be submitted to 12 men more intelligent, more impartial or more competent to decide the issue or that more or clearer evidence will be produced on one side or the other and with this view, it is your duty to decide the case if you can conscientiously do so. You have taken an oath to try this case under the evidence and instructions of the court and you should see you do your full duty thereunder.

The appellant's counsel have given the full instruction in the *Potard* case, *supra,* and feel that this case is so germaine as to warrant quoting at length. The removal of the possibility of a disagreement is set forth as follows:

> We are of the opinion that the giving of this instruction is prejudicial error. The only purpose that can be gleaned from it is that the trial court was preemptorily directing an agreement. In this the court invades and trespasses upon the province of the jury. The defendant in a criminal case is entitled to an acquittal unless each of the 12 men on the jury is convinced beyond a reasonable doubt of the guilt of the defendant without being importuned or coerced by the trial court. The defendant is entitled to the benefit of a disagreement by the jury. The very fact that each member of the jury must be convinced beyond a reasonable doubt of the guilt of the defendant before a conviction can be had, evidences the fact that jurors who are not convinced beyond a reasonable doubt of the defendant are obligated to sustain their convictions, even if a disagreement is the result. Of course verdicts ought to be agreed upon if possible. On the other hand a disagreement may result because of the very oath taken by a juror, as it may be the only way that his reasonable doubt may be manifested. In such a case, disagreement of the jury is a protective right to which a defendant is entitled.

The attempt of the court in this instruction to absolve himself from any intent to press or coerce a verdict is of no avail. The prestige of a trial court with the ordinary jury is well known. Any attempt by the court to encourage a verdict will be seized upon by the majority as a coercive argument against the minority, especially if the minority be small. Such a situation does not meet the constitutional requirements of a speedy public trial by an impartial jury.

As we have said, the only purpose of such an instruction is to encourage or coerce the jury into arriving at a verdict. If the instruction does not accomplish that purpose there is utterly no reason for giving it. If it does accomplish that purpose then it is clearly an invasion of the rights of the jury and the defendant has been deprived of his right to a speedy public and impartial trial. The law contemplates that when the jury has heard the evidence and has been instructed by the court as to the law, it understands the character and nature of its duty.

Potard v. *State*, 299 N. W. 362;
State v. *Fisher*, 59 Pac. 919;
State v. *Clark*, 149 Pac. 185;
People v. *Faber*, 199 N. Y. 256;
State v. *Campbell*, 160 Mo. app. 559, 149 S. W. 1173.

The use of *State* v. *Smith, supra,* not only once, but three times was prejudicial to the accused. Not only did the court refer to *State* v. *Smith* on these three occasions, but its use, coming at the times when it was made use of, was definitely and distinctly prejudicial. Its first use came when the jury had been deliberating all day and all evening. It was referred to again when the jury returned with requests for further instructions. It was referred to again after the jury had reported itself unable to agree on the second and third counts. It was referred to by the court as the law of the State, but without adequately instructing the jurors as to their duties and safeguarding the rights of the defendant.

The defendant was not only prejudiced by having the jury coerced against him but was deprived of his right to have the jury instructed again, that any decision must be that of unanimity of all of the jurors, each having the right to assert any reasonable doubts which might have assailed him.

> Where a court gives a supplemental charge of the character given in the instant case, it should again call the jury's attention to the presumption of innocence, the burden of proof, and the requirement that guilt must be established beyond a reasonable doubt; and should state that it is the duty of each juror to perform his duty honestly and conscientiously according to the law and the evidence and not to surrender his conscientious convictions. Such supplemental charges are calculated to wrongfully coerce the jury unless properly safeguarded.
>
> *Berger* v. *United States*, 62 F. (2nd) 438.

The court, not only referred to *State* v. *Smith, supra,* three times, but on the second and third occasion of its use, used language which went far beyond that in the case itself. On the occasion of the second use (F. 218, R. 51) and the third time, (F. 220, R. 52) the language used was clearly coercive.

On the second occasion (F. 218, R. 51) the court said:

> I read to you last night from the Supreme Court of this state; that it behooves every juror who is in the minority to carefully weigh and give consideration to the opinion of the majority, on the same facts, and with the *same determination to do the right thing,* ought not to cause that juror to *candidly examine his or her own conscience* and reexamine it, to see whether, in the light *of that preponderant opinion,* he or she might not have basis for changing his or her mind. But it still comes down to the first essence. Now, that answers the second question. (Italics ours.)

It would seem particularly objectionable to ask a juror, who might be in the minority, to examine his own conscience. Such an instruction by the court might well impel a juror who is withstanding the arguments of the majority, to feel uneasily that he was acting improperly or wrongfully. The use of the phrase "the same determination to do the right thing" might indicate to a juror that his stand, being one of the minority, appeared to the court to be the wrong thing, even though that juror had reached his own independent conclusion after reasonable consideration of all of the evidence and in the light of the court's instructions. The use of the phrase "preponderant opinion" might well lead the jury to confuse the degree of evidence required in a criminal case with that required in a civil case. Several of the jurors had served on civil cases. The danger of distinguishing the degree of evidence required in civil and criminal cases is always present and necessitates definite and clear instructions on the part of the court. The use of such a phrase, particularly under such circumstances might well have been detrimental to the defendant.

The third occasion for referring to the opinion in *State* v. *Smith, supra,* as stated heretofore, came after the jury had disagreed. The Court used the following language:

> You have presented your verdict as to the first count. The Court, presently, is going to accept and record that verdict. That represents your verdict. Before I do, however, I am going to say to you, however, that I am going to ask you to return, and *I want to say as strongly and as emphatically as I can* that you should bend every effort that you can, individually and collectively, to reach an agreement. I have told you repeatedly what the law is with reference to that, as far as our state is concerned. I said to you that no juror has the moral right nor the legal right, nor any sort of right, to allow a feeling with reference to the consequences of a finding of guilt to sway that juror in the conscientious, earnest

> performance of his duty or her duty, as the case may be. The verdict on the first count may be accepted and recorded. (Italics ours.)

The language in italics is so clearly coercive and exceeds the language used in *State* v. *Smith, supra,* to such an extent, that its use alone as well as the reiteration for a third time of the purport of the principle of *State* v. *Smith, supra,* entitles the defendant to a new trial.

United States v. *Burton,* 196 U. S. 307, 25 Sup. Ct. 250.
Stewart v. *United States,* 300 Fed. 769.

In *Stewart* v. *United States, supra,* the trial court charged the jury in accordance with instructions approved in *Allen* v. *United States,* 164 U. S. at 501, 17 Sup. Ct. 154, 157, substantially similar to that in *State* v. *Smith, supra.* The court went further and quoting from the *Allen* case added the following:

> It cannot be that each juror should go to the jury room with a blind determination that the verdict shall represent his opinion of the case at the moment, or that he should close his ears to the arguments of men who are equally honest and intelligent as himself.

This was held to be sufficient ground for reversal, the court stating:

> A slight thing may have turned the balance against the accused under the circumstances shown by the record (196 U. S. 307-25 Sup. Ct. 250). The supplemental charge and especially the excerpt from the opinion in Allen's case, were more than a slight thing, and our own conclusion is that they bore too hard upon the convictions of the minority of the jury, and that an impartial and fair administration of justice will be served by a new trial of this case.

VIII

Conclusion

The petitioner respectfully submits that the action of the trial court in requiring him to stand trial before the same jury, on all three counts in the indictment where each count charged the commission of acts separate and distinct from each other and at separate times and places, deprived him of his life and liberty, without due process of law, in violation of his constitutional rights and the supplemental instructions of the trial court were of such a nature as to deprive him of his life and liberty and right to a jury trial in violation of his constitutional rights.

We respectfully submit that a petition for a writ of certiorari should be granted.

Respectfully submitted,

ELLIOTT R. KATZ,
CHARLES HENCHEL,
Counsel for the Petitioner.